

E-FILED - 5/20/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH CARROLL FITZHUGH, JR.,)	No. C 07-1091 RMW (PR)
)	
Petitioner,)	ORDER DENYING
)	CERTIFICATE OF
v.)	APPEALABILITY
)	
JOHN MARSHALL, Warden,)	
)	
Respondent.)	
_____)	

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 12, 2009, the court granted respondent's motion to dismiss the petition as untimely. Petitioner filed a timely notice of appeal and request for certificate of appealability.

Upon the filing of a notice of appeal and a request for a certificate of appealability (COA), the district court shall indicate which specific issue or issues satisfy the standard for issuing a certificate, or state its reasons why a certificate should not be granted. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997) (citing 28 U.S.C. § 2253(c)(3)). After reviewing the record, the court concludes that petitioner has not shown "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, petitioner's

request for a certificate of appealability is DENIED.

The clerk shall serve notice of this order forthwith to the United States Court of Appeal and to the parties. See Fed. R. App. P. 24(a).

IT IS SO ORDERED.

Dated: 5/20/10


RONALD M. WHYTE
United States District Judge